

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 1190 of 1999****For Approval and Signature:****HONOURABLE MR.JUSTICE A.L.DAVE****HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to
see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the
judgment ?

4 Whether this case involves a substantial question of law
as to the interpretation of the constitution of India,
1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VALSING KALIYA KOTVAL - Appellant(s)**Versus****STATE OF GUJARAT - Opponent(s)**

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Appearance :

MR BS SUPEHIA for the Appellant.

MR KP RAVAL, APP, for the Respondent.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE**and****HONOURABLE MR.JUSTICE
BANKIM.N.MEHTA**

Date : 21/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. The appellant was tried by Sessions Court, Baroda, in Sessions Case No.133 of 1999, for the offence of murder of Ramdas Tensing, allegedly, committed by the appellant on 22nd March, 1999 between 20.30 and 23.00 hours in the outskirts of village Mangrol, near well of P.W.1-Hiteshbhai Zaverbhai Patel. Considering the prosecution evidence, the Trial Court found that the prosecution was successful in establishing the charge of murder levelled against the accused-appellant and recorded conviction therefor, sentencing him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for three months by judgment and order dated 20th October, 1999, rendered in the said Sessions Case. Aggrieved by the said judgment and order, present appeal is preferred.

2. The facts of the case, in brief, are that the appellant and the deceased were working as labourers with P.W.1-Hiteshbhai Zaverbhai Patel. On the day of incident, the deceased was with the said Hiteshbhai Zaverbhai Patel in the evening when the appellant came there and informed that he had brought with him nine labourers for the agricultural work of Hiteshbhai. They were all kept at the room near the well of Hiteshbhai in the field. Deceased-Ramdas Tensing, with his family, was staying in the room near the well of Hiteshbhai Zaverbhai. At that time, deceased-Ramdas

demanded money from Hiteshbhai towards his wages and Hiteshbhai gave him Rs.100/-. It is the case of the prosecution that, thereafter, both Ramdas Tensing and appellant-Valsing left the house of Hitesh for going to the field. Late in the evening, around 23.00 hours, when the electric supply was properly settled, Hiteshbhai went to the field and noticed dead body of Ramdas lying near the well in an injured condition. He, therefore, approached his cousin, Ketanbhai Natwarlal Patel, whose field and well are located nearby. They both had gone to the place of incident again and, then, went back to the well of Ketanbhai and, then, informed police at about 5.00 next morning. The police registered the offence and started investigation. Having found sufficient material against the appellant, the police filed charge sheet against the appellant in the Court of learned Judicial Magistrate, First Class, at Karjan. Learned Judicial Magistrate, First Class, Karjan, in turn, committed the case to the Court of Sessions and Sessions Case No.133 of 1999 was registered.

3. Learned Advocate, Mr. Supehia, appearing for the appellant submitted that the case of the prosecution depends on circumstantial evidence as there is no eye-witness to the incident. Mr. Supehia submitted that the only circumstance available, proved and relied upon by the Trial Court for recording conviction is that of the deceased and the appellant were seen together last before the incident. Barring this, there are no circumstances pointing towards the guilt of the appellant.

3.1 Mr. Supehia submitted that, according to the

prosecution, the motive attributed for the murder is that the deceased had borrowed Rs.700/- from the appellant, which he was not repaying and, therefore, the appellant committed his murder. This aspect is negated through prosecution's own evidence where it is indicated that there were no monetary transactions between the two and that there were no disputes between the two. Mr. Supehia submitted that the conduct of P.W.1, the first informant, is strange and unnatural. When he went to the field at 11.00 P.M. on the day of the incident and noticed the dead body, instead of informing the family of the deceased, he went to his cousin, came back along with him and again went back to the well of his cousin, but chose not to inform the family of the deceased and, then lodged the F. I. R. The F. I. R. was lodged at 5.00 A. M. in the morning after about seven hours and the delay is not even tried to be explained by the prosecution.

3.2 Mr. Supehia submitted that, according to P.W.1, the deceased and the accused together left him for going to the field and, therefore, the prosecution case is that they left together for going to the field. But if the evidence is seen, Mr. Supehia submitted that, according to P. W.1-Hitesh, he gave Rs.100/- to deceased-Ramdas whereas the Inquest Panchnama indicates that only Rs.38/- were found from the pocket of the deceased. This would show that the deceased had in between gone somewhere else where he spent out either Rs.100/- or, at least, Rs.62/- and, therefore, no presumption or inference could have been drawn that the deceased and the appellant were together last. Mr. Supehia submitted that the appeal, therefore, may be allowed.

4. Learned Additional Public Prosecutor, Mr. Raval, has opposed this appeal. According to him, the Trial Court has considered the evidence, appreciated the same and has come to a correct conclusion and, therefore, the judgment may be upheld.

5. We have examined the record and proceedings in light of rival side submissions.

6. Dr. Vinaykumar Maganlal Mehta is examined at Exhibit 13. He is the doctor, who performed postmortem. He indicated that there was a cut wound of the size of 16 x 14 cms. on the right fronto parietal region with a corresponding fracture of skull under it. He also noticed an incised wound on left cheek of the size of 12 ½ cms. x ½ cm. He noticed one incised wound of the size of 14 cms. x 3 cms x ¼ cm. deep on the left side of neck with fractures of second and third vertebrae. There was fracture of left clavical with an incised wound of the size of 10 cms. x 3.5 cms. There was fracture of left radius and ulna. There were numerous corresponding internal injuries. The injuries were ante-mortem and sufficient in ordinary course of nature to cause death. The doctor has denied the suggestion that the injuries would be possible in a scuffle. The cause of death, as indicated by the doctor, is the fracture of second and third cervical vertebrae along with cutting of arteries supplying blood to the brain at neck level.

6.1 The above medical evidence clearly indicates that death of the deceased was homicidal and we have no hesitation in

accepting the evidence. We, therefore, conclude that the Trial Court was right in holding that the deceased met with a homicidal death.

7. Now, examining the question as to who could have caused homicidal injuries to the deceased, there is no direct evidence led by the prosecution. P.W.1-Hitesh Zaverbhai Patel, who is the first informant, is examined at Exhibit 6. He owns about 150 Vighas of land. He says that, he brings labourers from Madhya Pradesh for his agricultural work. On 22nd March, 1999, he had engaged Ramdas for agricultural work and sent him to his field. He came back at around 7.00 P.M. and informed that he had completed the work. Then, he was sent to the well for bath, etc. and he returned at about 7.30 P.M. Then the witness was sitting with Ramdas and other workmen. At about 8.00 P.M. Valsing (the appellant) came and, on inquiry, he informed witness-Hiteshbhai that he had brought with him nine labourers for work. The labourers were kept at the room near the well in the field. Thereafter, Valsing was asked to come next morning for the work. At that time, Ramdas demanded Rs.100/- from the witness, which he gave and, thereafter, according to the witness, Valsing and Ramdas went together to the well for the night. This happened between 8.30 P.M. and 8.45 P.M. At about 11.00 P.M., the witness says that he went to the field for putting on the electric motor when there was power supply. There he found Ramdas lying in an injured condition. He, therefore, went to his uncles well where he found his cousin, Ketan. He informed Ketan about Ramdas and both of them came to the well to confirm. They noticed injuries on

neck and eye of deceased-Ramdas. Thereafter, they again went to the well of Ketanbhai and Ketanbhai advised him to go to Police Station for lodging complaint. Therefore, both of them went to Karjan Police Station and lodged the F. I. R. Around the time when the incident occurred, deceased-Ramdas and his wife, Dhuriben, along with their son-Mukesh and daughter were staying in the room at the well.

During Cross-examination, it emerges that Valsing (the appellant) had taken money from him and left for his hometown on 20th March, 1999. He admits that he does not know as to what actually had happened.

7.1 P.W.2-Ketanbhai Natwarbhai Patel is examined at Exhibit 9. He is the cousin of first informant-Hitesh. He says that, around 11.00 P.M., Hitesh had come to him at the field and informed that Ramdas was lying dead near the well. Therefore, they both went on a motorcycle to the well. Hitesh also informed this witness that Valsing had told him that he had brought nine labourers with him and had kept them at the well. But when they went there, no such labourer or Valsing was present. Wife of Ramdas and two young children were sleeping in the room and they returned to his well. He deposes that he had not informed wife of Ramdas and children about the incident as they were sleeping. He also admits during cross-examination that there were no dispute between Valsing and deceased-Ramdas. The well and the room near the well are adjacent to each other.

7.2 Dhuriben, wife of deceased-Ramdas, is examined at Exhibit 10. She says that the appellant has murdered her husband for no specific reason. She says that at about 6.00 P.M., her husband came and asked her to prepare meals. He then left for the house of Hiteshbhai. She says that Valsing had come to the well and, therefore, she felt that Valsing had murdered her husband. She says that there were no dispute between Valsing and her husband. During cross-examination, she admits that she has not seen the incident herself. She also admits that she has not stated in her police statement that she had seen Valsing going.

7.3 Witness-Maganbhai Somabhai is examined at Exhibit 11. He is one of the labourers working in the filed of P.W.1-Hiteshbhai. He was present at the house of Hitesh on the day of incident and he says that Ramdas and Valsing went towards the well. Differently put, he supports the version of P.W.1, who does not add anything more than what is deposed to by P.W.1. He admits during cross-examination that the deceased left at 6.30 P.M., as against Hitesh saying that he left at about 8.30 P.M. He also admits that two days prior to the incident, Valsing had gone to his native place after taking some money from Hitesh. The witness admits that he gave police statement as per desire of Hiteshbhai.

7.4 P.W.6-Miteshkumar is a Panch witness in whose presence the police is alleged to have discovered Paliya, the weapon which was, allegedly, used in commission of the crime. He says that the said Paliya was discovered by Valsing from the field of

Hiteshbhai. He admits during cross-examination that he did not know the contents of papers which he had signed. He says that he was summoned at the field of Patel and his signatures were obtained.

7.5 Another Panch witness is Pravinsinh Takhatsinh Jadav (Exhibit 18). He says that Valji had discovered a Paliya from the field. He says that he had put two signatures on the writing drawn, but he had not seen the contents thereof.

7.6 Witness Samubhai Chhotubhai is a Panch witness, who has not supported the prosecution case.

7.7 P.W.9-Subhashbhai Dahyabhai Patel is examined at Exhibit 23. P.W.10-Amrutlal Ramjibhai Chaudhary is examined at Exhibit 25.

8. From the evidence narrated above, the picture that emerges is that there is no direct evidence on the incident. The only material that is available against the appellant is that he left along with the deceased from the house of P.W.1-Hitesh. The evidence in this regard is inconsistent to the extent that, according to Hitesh, they left together at about 8.30 P.M., whereas, according to Maganbhai, they left at about 6.30 P.M. This may not be so significant, but when the case is hanging on this major circumstance that they left together and were last seen together, this contradiction would merit some weightage.

8.1 The theory of the prosecution of both deceased and the appellant having left for the field together reels under a cloud of doubt when it is found that, as per the evidence of P.W.1, the deceased was given Rs.100/- by him, whereas only Rs.38/- were found from the pocket of the deceased as per the Inquest Panchnama. The question is where has rest of the money gone or possibly the deceased had Rs.38/- with him and he spent out Rs.100/-, allegedly, given to him by P.W. 1 or may be P.W.1 did not give Rs.100/- to the deceased, as he claims to have given. That apart, one thing is certain that after the deceased left the house of P.W.1 and before he was done to death near the well of P.W.1, the deceased had gone somewhere where he had spent at least Rs.62/- or may be Rs.100/- because only Rs.38/- were found from his pocket. The theory that the deceased and the appellant left the house of P.W.1 and went to the field together, thus, does not inspire confidence. The possibility of the deceased having gone somewhere and spent some money and thereby departed from the company of the appellant, after P.W.1 lastly noticed them together cannot be ruled out.

9. Apart from the above aspects, we find that there is total lack of any other circumstance to support the hypothesis of guilt of the accused or to rule out the hypothesis of innocence of the accused.

10. The conduct of P.W.1-Hitesh and P.W.2-Ketan also appears to us to be strange and unnatural. Although P.W.1 was aware that family of the deceased was staying in the room

adjoining the well in his field, though he noticed the dead body of the deceased at 11.00 P.M. on the day of the incident, he did not inform the family of the deceased, but went to his cousin. Later on, when both of them came to the place where the dead body was lying, again they left the place without informing the wife of the deceased. The dead body and the room were very close to each other and there was no reason for them not to inform the family of the deceased.

11. Another factor which has remained unexplained by the prosecution is that, though a number of injuries were caused to the deceased with sharp cutting instrument, no one from the family of the deceased even heard any sound of scuffle or fight. Apart from family of the deceased, even as per the prosecution case, there were nine other labourers who were stationed at the room near the well of P.W.1. Any one of them could have noticed the incident and could have been examined, which has not been done.

12. It has also come in evidence that there were no monetary transactions between the deceased and the accused and the prosecution theory, on motive, therefore, cannot be accepted. Therefore, here is a case where the prosecution has not been able to prove motive. There was no animosity between the two either. In this set of circumstances, a complete chain of circumstances proving the guilt of the accused cannot be said to have been established by the prosecution. The only foundation on which conviction is recorded, namely, the deceased and the accused having seen together last, is also found to be not reliable and

barring that, there is no other circumstance brought on record by the prosecution to complete the chain of circumstances to connect the appellant with the crime. We are of the view that conviction recorded by the Trial Court is erroneous and cannot be sustained.

13. The appeal deserves to be allowed and the same is allowed. The judgment and order of conviction and sentence recorded by the Trial Court is hereby set aside. The appellant is acquitted of the charges with which he was charged and was convicted. The appellant is ordered to be set at liberty forthwith, if not required in any other case. Fine, if paid, shall be refunded to the appellant.

[A. L. DAVE, J.]

[BANKIM N.MEHTA, J.]

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